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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-129

Filed: 1 August 2017

Guilford County, Nos. 14 JT 212, 319

IN THE MATTER OF: J.M.N. and J.M.N.

Appeal by respondent-mother from order entered 10 November 2016 by Judge Randle L. Jones in Guilford County District Court. Heard in the Court of Appeals 11 July 2017.

Mercedes O. Chut for petitioner-appellee Guilford County Department of Health and Human Services.

Robert W. Ewing for respondent-appellant mother.

Parker Poe Adams & Bernstein LLP, by William L. Esser IV, for guardian ad litem.

MURPHY, Judge.

Respondent-mother (“Cindy”)¹ appeals from an order terminating her parental rights to her minor children, J.M.N. (“James”) and J.M.N. (“Jenny”).² We hold the

¹ Pseudonyms are used throughout to protect the children’s identities and for ease of reading. The trial court also terminated the parental rights of the children’s fathers, but they are not parties to this appeal.

² Although Cindy appealed the entirety of the order terminating her parental rights to both James and Jenny, on appeal she only makes arguments regarding the trial court’s decision to terminate her parental rights as to James.

trial court did not abuse its discretion terminating Cindy's parental rights, and affirm the trial court's order.

Background

The Guilford County Department of Health and Human Services ("DHHS") filed petitions in May and August 2014, alleging James and Jenny were neglected and dependent juveniles. DHHS also obtained non-secure custody of the children when it filed the juvenile petitions. The trial court entered orders on 24 July 2014 and 23 October 2014, adjudicating James to be a neglected and dependent juvenile and Jenny to be a dependent juvenile, and directing Cindy to enter into a case plan with DHHS to address mental health problems and substance abuse problems and to obtain and maintain appropriate housing.

After a permanency planning hearing on 11 March 2015, the trial court entered orders setting the permanent plan for both juveniles as adoption with a concurrent plan of reunification with a parent. DHHS filed a motion to terminate parental rights to the children on 19 February 2016. DHHS alleged grounds existed to terminate Cindy's parental rights based upon neglect, failure to make reasonable progress to correct the conditions which led to the children's removal from her care, failure to pay a reasonable portion of the cost of the children's care, dependency, and abandonment.³ See N.C.G.S. § 7B-1111(a) (2015) (listing the grounds for terminating

³ DHHS alleged the ground of dependency only as to James, as Jenny was in a relative placement that had been proposed by Cindy.

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parental rights). After a hearing on 16 August 2016, the trial court entered an order on 10 November 2016 terminating Cindy's parental rights to James and Jenny. The trial court concluded all grounds alleged in the petition existed to terminate Cindy's parental rights and that termination of parental rights was in the children's best interests. Cindy filed timely written notice of appeal.

Analysis

Cindy argues the trial court abused its discretion in concluding that termination of her parental rights was in James' best interest because: (1) there was insufficient evidence to support the trial court's conclusion; and (2) the evidence before the trial court established that there was not a high likelihood of his adoption. We disagree.

I. Sufficiency of the Evidence

Cindy contends there was insufficient evidence to support the trial court's conclusion that termination of her parental rights was in James' best interest, because it did not review an investigative report from Davidson County Department of Social Services ("DSS") regarding allegations that James' foster mother and prospective adoptive parent had used improper discipline. Instead, the trial court heard testimony from a Guilford County social worker, who stated DSS had informed her the allegation of improper discipline was unsubstantiated and DSS was going to close the investigation. Cindy argues the trial court should have considered the

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actual report and the trial court abused its discretion by relying on the social worker's testimony. Cindy, however, did not present this argument to the trial court. She thus failed to preserve this issue for appellate review and is precluded from raising it before this Court for the first time. *See* N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . .").

II. Adoptability

Cindy argues the trial court abused its discretion in concluding termination of her parental rights was in James' best interest, because the evidence before the trial court established that there was not a high likelihood of his adoption. Cindy concedes that the trial court was not required to find that James is adoptable before terminating her parental rights. *See In re Norris*, 65 N.C. App. 269, 275, 310 S.E.2d 25, 29 (1983) (explaining a finding of adoptability is not required to terminate parental rights). Nevertheless, she argues that the trial court failed to conduct any analysis of how James' special needs would impact his adoptability, and thus this Court cannot conclude from the record that James can be adopted. Cindy's argument is misplaced.

"After an adjudication that one or more grounds for terminating a parent's rights exist, the [trial] court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2015). When determining

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whether it is in a juvenile's best interests to terminate parental rights, the trial court must consider the factors set forth in N.C.G.S. § 7B-1110, which include the juvenile's age, the juvenile's likelihood of adoption, whether termination will accomplish the juvenile's permanent plan, the bond between the juvenile and the parent, the quality of any relationship between the juvenile and any potential adoptive parent, and any other relevant consideration. *Id.* § 7B-1110(a). "The decision to terminate parental rights is vested within the sound discretion of the trial [court] and will not be overturned on appeal absent a showing that the [trial court's] actions were manifestly unsupported by reason." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 75, 623 S.E.2d 45, 51 (2005) (citation omitted).

Here, the trial court made numerous findings of fact addressing each of the factors set forth in Section 7B-1110(a) before concluding that termination of Cindy's parental rights is in his best interest. Cindy has not challenged any of the trial court's findings and they are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.") (citations omitted). With regard to James' adoptability, the trial court's findings of fact establish that James' foster mother has expressed a desire to adopt him, that James has a close and positive bond with his foster mother, that both DHHS and James' guardian ad litem recommended that Cindy's parental rights be

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terminated, and that James is “highly likely to be adopted[.]” Cindy has not shown that the trial court’s best interests determination is manifestly unsupported by reason. We conclude the trial court’s findings of fact reflect thoughtful and deliberate reasoning by the trial court and support its conclusion that termination of Cindy’s parental rights is in James’ best interests.

Conclusion

The trial court did not abuse its discretion in concluding that termination of Cindy’s parental rights was in James’ best interest because there was sufficient evidence to support the trial court’s conclusion and the evidence before the trial court established that there is a high likelihood of his adoption. Cindy has not challenged the trial court’s conclusion that grounds exist to terminate her parental rights to James and Jenny, and has not challenged the trial court’s conclusion that termination of her parental rights is in Jenny’s best interests. Accordingly, we affirm the trial court’s order terminating her parental rights to James and Jenny.

AFFIRMED.

Judges BRYANT and HUNTER, JR. concur.

Report per Rule 30(e).